



SCHOOL OF LAW

THE UNIVERSITY OF TEXAS AT AUSTIN

727 East 26th Street • Austin, Texas 78705-3299 • (512) 471-5151

Telecopier Number (512) 471-6988

February 6, 2005

Senator John Cornyn
617 Senate Hart Office Building
Washington, DC 20515

Dear Senator Cornyn:

There is no single reform of our Chapter 11 system that is as important as ensuring an end to the forum shopping that has so distorted that system in recent years. The present venue rules are so loosely constructed that they permit any large public company to file a Chapter 11 pretty much wherever it likes. Naturally, the management of companies in financial trouble and the professionals that advise them take advantage of those rules to choose the forum that will best serve their interests. Often that means a Chapter 11 filing in a courthouse far away from the company's home.

These rules permit the company's management to escape the close scrutiny of intensely interested local media and to avoid attendance at court hearings by employees, local suppliers, and others vitally interested in the case and knowledgeable about the company. They force smaller creditors to file claims from afar, claims that are often the subject of an arbitrary objection by the debtor that the distant creditor cannot afford to litigate. Conversely, creditors who received some payment before bankruptcy may be the subject of long-distance preference attacks that they cannot properly defend in a remote courthouse, especially if the amounts involved, although substantial, are not enough to justify the expense of a defense. Compounding the problem of expense is the creditor's lack of knowledge of lawyers in the distant forum and the risk, especially in Delaware, that in a big case most experienced local lawyers will already be committed to other clients. On top of these direct injuries to creditors, in cases where a trustee in bankruptcy is appointed, the administration of assets hundreds or thousands of miles removed from the trustee's home cannot be done efficiently and rarely can be done well.

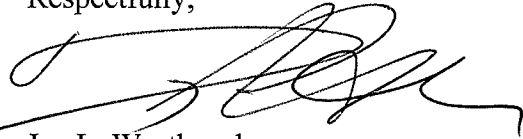
These and other effects of forum shopping are inefficient and prejudicial. In addition, the present system imposes subtle pressures on bankruptcy judges and district judges, who cannot be unaware that their decisions as to venue will determine whether the community and the local bar will be greatly enriched by the administration of large

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bankruptcy cases. Despite the high degree of professionalism on our federal bench, it is not reasonable to expect that these pressures will have no effect.

Although I am expressing my own opinions and not speaking for the University or the Law School, I write as someone who has practiced, studied, taught, and written about bankruptcy law for over thirty years. Please let me know if I can provide further information that would be helpful to your work.

Respectfully,

A handwritten signature in black ink, appearing to read 'Jay Westbrook', with a long horizontal line extending to the left.

Jay L. Westbrook
Benno C. Schmidt
Chair of Business Law